IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17374 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MALVAT HUSSAIN MOHAMADBHAI - Petitioner(s)
Versus
THE CHIEF MANAGER & 1 - Respondent(s)

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Appearance :
MR DR BHATT for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 30/07/2007

ORAL JUDGMENT

1. Heard Learned Advocate Mr. DR Bhatt for petitioner.

2. Through this petition, petitioner is challenging

the order of transfer transferring the petitioner from Ahmedabad Branch to Nadiad by order dated 30.3.2007. Earlier, petitioner had approached this court by way of SCA No.11361 of 2007 against the aforesaid order of transfer wherein the petitioner was directed to approach the respondent bank by way of representation and respondent bank was directed to decide it as per the order dated 27.4.2007. Petitioner made such representation on 14.5.07. Respondent bank by order dated 20.6.2007 examined representation of petitioner and rejected the same by said detailed order dated 20.6.2007. Therefore, this petition has been filed by the petitioner before this court.

3. Learned Advocate Mr. DR Bhatt for petitioner has read over entire representation dated 14.5.07 and reply thereto dated 20.6.2007 and settlement and pointed out that petitioner was suspended because of the misconduct committed by him. Ultimately, he was punished by way of stoppage of one annual increment with cumulative effect for both the charges by order dated 23.3.2007.

Learned Advocate Mr. Bhatt submits that transfer order is bad, contrary to settlement and reply given by the respondent bank is mechanical in nature, given without application of mind and, therefore, same is liable to be set aside.

4. I have considered the submissions made by the learned Advocate Mr. Bhatt and I have also perused the reply of the respondent bank dated 20.6.2007 wherein representation of the petitioner dated 14.7.2007 was rejected by the bank. Charge No.1 against the petitioner was that engaging in any trade or business outside the scope of his duties which is a gross misconduct under clause 19.5.(a) of Bipartite Settlement 1966 as amended till date. Charge NO.2 was to the effect that doing an act prejudicial to the interest of the bank which is a gross misconduct under Clause 19.5(j) of the Bipartite Settlement 1966 as amended till date. Both the said charges have been proved against the petitioner and punishment of stoppage of one annual increment with cumulative effect has been imposed against the petitioner by order dated

23.3.07 and suspension order was revoked by the bank. Thereafter, petitioner came to be transferred on 30.3.07 from Ahmedabad to Nadiad as stated earlier which is under challenge. Therefore, this answer given by the bank on 20.6.2007 is quoted as under:

> "This refers to your representation dated 14.5.2007 against the transfer order no. AX5/ST/TR/2007 dated 23.03.2007. You have been transferred to Nadiad Branch vide the said order. We have gone through the contents o your representation and we have to inform you as under:
>
> 1. Normally on revocation of suspension order, employees are not continued at the same branch, as the same is not congenial for the internal harmony and smooth running of the branch and also to avoid chances of recurrence of the same activities.
>
> 2. There is acute shortage of clerical staff at Nadiad Branch where the clerical strength has been reduced by 50%. The earlier strength was of six clerk and the present strength is of three clerks

owing to the promotion of two clerks as officers and one clerk as Special Assistant. The branch is a growing branch with PEB of Rs.754.87 lacs against the PEB of Ahmedabad Region of Rs.326.68 lacs and Ahmedabad City Rs. 254.38 lacs.

3. This requires frequent deputation of clerks from outside branches to Nadiad Branch resulting in heavy expenditure towards TA/DA.

4. As per the provisions of VIII Bipartite Settlement of 02.06.2005 an Industry Level settlement arrived at between the Indian Bank's Association on behalf of all the member of banks and various trade unions, as per schedule no. V, point no. 2 regarding deployment of st aff the provision reads as under:

'In case necessiting employment outside the District, the workman concerned may be deployed to any of the branches / offices of the bank out side the district upto a distance not exceeding 100 kms from the present place of posting.'

Hence no injustice has been meted out to you as Nadiad Branch is approx. 45 kms from Ahmedabad. Further, there is no criterion

spelt out for seniority based transfer. Hence, allegation on this count is not tenable.

5. Besides, Badiad Branch is the nearest branch outside Ahmedabad city and within the periphery of the City and takes around one hour by rail for communication. The branch is near the station hence daily commutation is also possible. Even there are number of daily commuter from Baroda for jobs at Ahmedabad.
6. The staff at Ahmedabad is already in excess and bank is contemplating rational distribution of clerical staff in branches in consultation with union and as per the provision of Bipartite Settlement.
7. There are few deputations from Ahmedabad to outside Branches.
8. The grievances regarding children studying at Ahmedabad and aged parents is normal as almost all employees have one or the other type of family/social responsibilities and problems, which cannot come in the way of transfer on an employee for smooth administration.
9. The financial status of all the

clerical staffs are at par and the housing loan has been taken for your own benefit, which cannot be taken as pretext for avoidance of transfer.

In view of the above, we are of the opinion that the transfer made on administrative grounds to Nadiad Branch cannot be revoked/modified."

5. Considering the aforesaid reply given by the bank and also considering the facts of the present case narrated above and the fact that the petitioner in Ahmedabad since 1992, according to my opinion, order of transfer is rightly passed by the respondent authority and respondent bank was also right in passing the order rejecting representation made by the petitioner. For that, there is no mala fide intention on the part of the bank and there is no arbitrary exercise of the powers by the bank. Because of the transfer, seniority of the petitioner has not been adversely affected and promotional avenues are also not curtailed. The transfer is a condition of service and an

incident of service, therefore, merely because the petitioner is a middle age person, having place in the middle of the seniority list, neither junior nor senior, therefore, not justified in contending that junior is not transferred and senior is not transferred and, therefore, transfer is mala fide. Simple answer is that neither junior nor senior has committed the misconduct but petitioner alone has committed misconduct, therefore, punishment order was passed against him. Normally, transfer is the prerogative right of employer to decide and determine as to who should be transferred and where he should be transferred. Even in case of undesirable person, employer has right to transfer such undesired employee to another place and it is not open for the employee to remain at one place upto the end of his service or retirement. In National Hydroelectric Power Corporation Ltd. Versus 1.Shri Bhagwan & Anr. Reported in (2001) 8 SCC 574, the apex court has taken view as under in para 5 of the judgment:

"5. On a careful consideration of

the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer.It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provision prohibiting any such transfer, the Courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the

appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present case, at any rate, no such result is bound to occur since the Project undertaken to

> which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance."

6. Aforesaid decision has recently been considered by the apex court in case of Union of India and others versus Janardhan Debanath and another reported in (2004) 4 SCC 245. In the said decision, the apex court has considered that even undesirable person can be transferred. For that, departmental inquiry is not necessary to be initiated by the concerned employer. Ultimately, employer has to see the working in undertaking must have to be carried out smoothly and peacefully with harmony. Therefore, in case of allegation or some stigma, some preliminary inquiry is enough before resorting to transfer of such employee. No detailed departmental inquiry is necessary against such person. Relevant observations made by the apex court in para 9 of said judgment are reproduced as under:

> "9. A bare reading of Rule 37 shows that officials of the Department are liable to be

transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers were not to be ordered except when advisable in the interest of public service. The transfers can be made subject to conditions laid down in FR 15 and 22. The appellant has indicated as to why and under what circumstances the transfers were thought proper in the interest of public service. The High Court while exercising jurisdiction under Article 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon the peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of

transferable posts from one place to another is not only an incident but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provision prohibiting any such transfer, the Courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan [(2001) 8 SCC 574 : 2002 SCC (L&S) 21."

7. This Court has considered the question of transfer in Natvarlal M. Chavda v/s. State of Gujarat reported in 2001 (1) CLR 1076. The relevant para 11 to 17 are quoted as under:

"11. Heard the learned advocates

appearing for the respective parties at length. Ultimately, the transfer is a matter of incident of service and the Court should not normally interfere in such transfer matters unless and until the malafide or arbitrariness has been proved by the petitioner and/or if the transfer is not made in the interest of the administration and public interest. Looking to the facts as well as the averments made by the respective parties in such circumstances, according to my opinion, the petitioner has been rightly transferred. This cannot be a mala fide exercise of power nor colourable exercise of power by the respective authorities. One fact is very clear that petitioner was not appointed by the Board under Section 11 of the Act. In the instant case, the petitioner was deputed by the State Government to the Welfare Board as a Welfare Commissioner. Such deputation can be withdrawn by the State Government; if his services are not found to be useful or in the interest of the institution. Now, when the Institution concerned had disclosed its intention not to avail off the services of the present petitioner any longer, it is the duty of the State Government to consider such a request made by the highest authority ie., by the Chairman of the Board. In administration mere differences or disputes amongst the higher and subordinate officers cannot be considered to be malafide. In service career number of incidents are bound to happen and that cannot be treated as a cause of transfer.

12. Sometimes, incidents may give cause of action of transferring an employee from one place to another but that cannot be considered to be malafide, if the same is permissible under the rules and is made in the public interest. Vast administration has to be managed by the Government and if any complaint or grievance in respect of the working of an employee had been received by the authority and it is found by the authority that the working system, nature of person and his conduct is not in the interest of the administration, and if such employee is allowed to continue on such post or office, then ultimately it will adversely affect the entire organization then in such circumstances, it is within the powers of the Government to transfer such person in the interest of overall administration of the said institution. Moreover, when upon receipt of the complaints no departmental inquiry or chargesheet is given and simply a person has been shifted from one place to another that cannot be said to be a punishment and/or mala fide action on the part of the Government. In such a situation, the best authority is the Government who can take decision that service of a particular employee can be utilized properly at which place and in such circumstances, the Court is not an appellate authority. The Court is having very limited role in the extreme cases of mala fide, personal interest of some body, prejudice or colourable exercise of power. In the present case, there was no personal interest of the respondent no. 4 for transferring the petitioner. The request made by the respondent no. 4 to the Government with respect to withdrawal of the services of

petitioner is made in the sole interest of the administration of the Welfare Board, and the State Government has rightly considered it and passed an order of transfer by way of withdrawing services of petitioner; who being a deputationist on the Welfare Board. Therefore, according to my opinion, there is no mala fide or colourable exercise of power by the respondents.

13. In this regard, there are some of the observations made by the Apex Court in such a situation, which requires consideration. They are, in the matters of E.P Royappa v. State of Tamil Nadu & Anr., reported in [AIR (1974) SC 555] wherein in paragraph nos. 88 & 92 it has been observed thus;

`88. Secondly, with the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialized experience. It is always a difficult problem for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such specialized posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts, though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When, in exercise of this choice, the Government transfers an officer from one post to another, the

officer may feel unhappy because the new post does not give him the same amplitude of the powers which he had while holding the old post. But that does not make the transfer arbitrary. So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Arts. 14 & 16.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility... In this context, it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and theyare made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct

against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up these considerations are wholly irrelevant unjudicial approach

- but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand point that we must assess the merits of the allegations of mala fide made by the petitioner against the second respondent.'

14. In the matter between M. Sankaranarayanan, IAS v. State of Karnataka & Ors., {AIR (1993) SC 763} in paragraph-12, the Court has observed that, `..After considering the respective contentions of the learned counsel appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed mala fide and/or for an oblique purpose in order to punish the appellant and/or to humiliate him. The pleadings of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic officers of the State had not been accepted by the present Chief Minister. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and putting up notes to that effect, he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual material and such factual matrix cannot remain in the realm of insinuation,

surmise or conjecture. In the instant case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Ministers had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post is very senior officer of their confident to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority.'

15. In the matter between State of Madhya Pradesh & Ors. v. Sri S.S Kourav & Ors., reported in JT (1995) (2) SCC 498, in paragraph no. 4, the Court has observed that, `..it is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to retransfer him again to Jagdalpur. We cannot appreciate these grounds. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper place. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case, we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we

cannot go into the expediency of posting an officer at a particular place.'

16.In the matter of N.K Singh vs. Union of India & Ors., reported in AIR (1995) SC 423 at paragraph Nos. 4,6,9, 22 & 23, the Court has observed that;

`4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such case would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

6. Learned counsel for the appellant did not dispute that the scope of Judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision or guidelines regulating such transfers amounting to

arbitrariness. In reply, the learned Addl. Solicitor General and the learned for respondent no. 2 did not dispute the above principle, but they urged that no such ground is made out; and there is no foundation to indicate any prejudice to public interest.

9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter of objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into the aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.

22. However, acceptance of the appellant's claim would imply that no other officer in the C.B.I is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of any one to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bona fide decision of the superiors in service and their

honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superior taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norms of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

23. The private rights of the appellant being unaffected by the transfer, he would have been well advised to leave the matter to those in public life who felt aggrieved by his transfer to fight their own battle in the forum available to him. The appellant belongs to a disciplined force and as a senior officer would be making several transfers himself. Quite likely many of his men, like him, may be genuinely aggrieved by their transfers. If even a few of them follow his example and challenge the transfer in course, the appellant would be spending his time defending his actions instead of doing the work for which he holds the office. Challenge in courts of a transfer when the career prospects remain unaffected

and there is no detriment to the government servant must be eschewed and interference by courts should be rate, only when a judicially manageable and permissible ground is made out. This litigation was illegally advised.'

17. Lastly, in the matter between Union of India & Ors. vs. S.L Abbas, reported in {AIR (1993) SC 2444} in paragraph no. 7, the Court has observed thus :

`7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legal enforceable right."

8. In view of the aforesaid observations made by the apex court and also considering the important aspect for which learned Advocate Mr. DR Bhatt has observed silence that because of

the transfer, seniority of the petitioner has not been adversely affected and promotional avenues have also not been curtailed, it becomes part of the service conditions must have to be obeyed by the petitioner if he wants to work with the respondent bank. By reporting at Nadiad, it cannot be said that the petitioner has obeyed order as if he has shown some grace in favour of the respondent bank. In doing so, petitioner is not obliging the administration. Otherwise, he has to face the consequences thereof. Therefore, according to my opinion in the facts of the case and considering the fact that since 1992, petitioner is at Ahmedabad, respondent has rightly examined representation of petitioner and has rightly given answer in respect of the contentions raised by the petitioner in his representation. Ultimately, petitioner is not an employer but he is an employee. Whether the senior should be transferred or junior should be transferred is not the look out of the petitioner but it is the absolute discretion of the administration to be

exercised in the best interest of the administration. It is the prerogative of the employer to considers the entire facts and circumstances of the case and looking to the factual aspect that on 23.3.2007, after receiving punishment order, suspension order was revoked by the respondent bank authority and thereafter, the petitioner was transferred which is a normal reaction of the reasonable employer and in reacting in such a manner, respondent bank has not committed any error. It is not an arbitrary or mala fide exercise of the powers by the bank authority and, therefore, the matter does not warrant any interference of this court in exercise of the powers under Article 226 of the Constitution of India.

9. In result, this petition is dismissed.

(H.K. Rathod,J.)

Vyas